

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

FEBRUARY 26, 1998

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (BRADY) *BRADY*
DIVISION OF LEGAL SERVICES (REYES) *REYES*

RE: DOCKET NO. 971635-SU - RHV UTILITY, INC. - NOTICE OF
ABANDONMENT OF WASTEWATER SYSTEM.
COUNTY: CITRUS

AGENDA: MARCH 10, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\971635SU.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

RHV Utility, Inc. (RHV or utility) is a Class C wastewater utility located near the City of Homosassa in Citrus County. The utility provides wastewater service to approximately 402 residential customers in Riverhaven Village and 4 general service customers. The Homosassa Special Water District provides water service to the utility's service area. RHV's 1996 annual report lists total gross revenues of \$116,927 with a net operating loss of \$50,003.

On November 24, 1997, the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Citrus County (Circuit Court or Court) issued an order in Case No. 97-1872-CA which effectively declared the utility abandoned by the appointment of Citrus County (County) as receiver of the utility's assets. Case No. 97-1872-CA was an enforcement action brought by the Florida Department of Environmental Protection (FDEP) against RHV for long-term failure to bring its wastewater systems into environmental compliance. The Circuit Court appointed the County receiver after having been advised by RHV that it had found no immediate buyer for the utility and that it otherwise had no financial means to respond to the previous orders of the Circuit Court with respect to the enforcement action.

This recommendation is being brought to the Commission to acknowledge the abandonment of RHV and the appointment of Citrus County as receiver, as well as to address the outstanding penalties and interest associated with the utility's untimely remittance of its 1993 and 1996 regulatory assessment fees. Outstanding penalties associated with the utility's late-filing of its 1994 and 1995 annual reports will be dealt with in a subsequent recommendation in this docket after staff receives additional information from the utility. In addition, all outstanding issues relating to the staff-assisted rate case in Docket No. 961220-SU will be dealt with in a separate recommendation in that docket.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the abandonment of RHV Utility, Inc., and the appointment of Citrus County as receiver for the utility's assets?

RECOMMENDATION: Yes, the Commission should acknowledge the abandonment of RHV Utility, Inc., and the appointment of Citrus County as receiver for the utility's assets. Wastewater Certificate No. 429-S should remain in effect until all issues relating to this docket and Docket No. 961220-SU are resolved. RHV Utility, Inc., should be responsible for estimating and paying 1997 regulatory assessment fees up through November 24, 1997. (BRADY, REYES)

STAFF ANALYSIS: As noted in the Case Background, the Circuit Court, Fifth Judicial Circuit, Citrus County, Florida, effectively declared RHV abandoned by the appointment of Citrus County as receiver on November 24, 1997. In the order appointing the County receiver, the Circuit Court made the distinction that the County was receiver only as to the assets of the utility, not receiver of RHV Utilities, Inc.. The appointment was to be effective immediately and will remain in effect until such time as the receiver disposes of the plant and files a final report or until otherwise discharged by the Circuit Court. The plant was defined as the wastewater treatment plant and wastewater collection system owned by RHV, including all pipes, lift stations, lines, and other appurtenances.

The receiver was given all normal powers and authorities necessary to effectively and efficiently provide wastewater service, including applying for an increase in rates or special assessments against the customers of the utility. Meanwhile, the owners of RHV were directed to forward to the receiver all funds currently held in accounts of the utility for the receiver's use in accordance with the terms of the order.

Since the Commission has an open docket with issues relating to the accounts of the utility, Commission staff met with officials of Citrus County in Inverness, Florida, on December 18, 1997. In the meeting, the County was advised of the issues remaining pursuant to the utility's staff-assisted rate case in Docket No. 961220-SU. In addition, staff offered the County any assistance it may require with the transfer to Citrus County. Also attending the meeting were representatives of the utility, the Florida Department of Environment Protection, and the utility's customers.

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Based on discussions at this meeting, the County decided it was in the best interests of the ratepayers of Riverhaven Village and RHV's remaining service area for the County to operate the utility as an exempt entity pursuant to Section 367.022(2), Florida Statutes, and by letter dated December 19, 1997, the County served official notice of its intention to do so.

Staff has confirmed that the utility's regulatory assessment fees (RAFs) are current through 1996; however, there are outstanding penalties and interest in the amount of \$1,192.40 which are associated with the untimely remittance of the utility's 1993 and 1996 RAFs. Staff's recommendation on the disposition of this amount will be dealt with in Issue 2. Since the utility is exempt from RAFs while being operated by the County as an exempt entity, RHV is responsible for 1997 RAFs up to the effective date of the abandonment on November 24, 1997.

Based on the foregoing, staff recommends that the Commission acknowledge both the abandonment of RHV Utilities, Inc., and the appointment of Citrus County as receiver of the utility assets effective November 24, 1997. Wastewater Certificate No. 429-S should remain in effect until all issues relating to this docket and Docket No. 961220-SU are resolved. Staff further recommends that RHV be held responsible for estimating and paying 1997 RAFs up through November 24, 1997.

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ISSUE 2: Should the request by RHV Utility, Inc., with Citrus County as Receiver, for a waiver of, or in the alternative an installment plan, for the penalties and interest associated with the utility's untimely remittance of its 1993 and 1996 regulatory assessment fees be approved?

RECOMMENDATION: The request by RHV Utility, Inc., with Citrus County as receiver, for a waiver should be denied; however, the request for an installment plan should be approved. The utility should be ordered to pay the penalties and interest for 1993 and 1996 by September 15, 1998, with a minimum of \$198.73 per month. The first payment should be due on April 15, 1998, and subsequent payments should be made by the 15th of each month thereafter. The Commission's approval of this payment schedule would be subject to the final approval of the Department of Banking and Finance. (REYES)

STAFF ANALYSIS: In establishing rates, the Commission includes in its determination of the revenue requirement the utility's obligation to pay regulatory assessment fees. Rule 25-30.120(2)(a), Florida Administrative Code, provides, "[r]egulatory assessment fees shall be filed with the Commission on or before March 31 for the preceding year ended December 31." However, this utility failed to timely pay regulatory assessment fees for 1993 and 1996.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1½ for each 30 days or fraction thereof, not to exceed a total of 12½ annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

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Staff has calculated the penalties and interest on the number of days elapsed since the respective regulatory assessment fees were due and the date they were actually remitted. Presently, the utility owes the following: \$789.26 in penalties and \$157.85 in interest for a total of \$947.11 for 1996 and \$204.41 in penalties and \$40.88 in interest for a total of \$245.29 for 1993. The combined total for both penalties and interest for 1993 and 1996 is \$1,192.40.

As stated previously, on November 24, 1997, Citrus County was appointed receiver of the utility. On February 12, 1998, the Commission received a letter from Citrus County as receiver requesting a waiver of these penalties and interest or, in the alternative, an installment plan for the fees. The receiver states that the utility's liabilities far exceed its assets and for all practical purposes is bankrupt at this time. In addition, staff is aware of the long-standing environmental compliance problems which have plagued this utility and precipitated the appointment of the receiver.

Pursuant to Sections 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, the Commission is required to collect interest, penalties, and collection costs from a regulated utility that is delinquent in the payment of its regulatory assessment fees. Florida statutes do not provide the Commission with the discretion to waive the statutory penalties and interest associated with the delinquent regulatory assessment fees. Therefore, staff recommends that the County's request for a waiver of the penalties and interest associated with the delinquent regulatory assessment fees be denied.

While the Commission has construed these provisions to bar waiver of regulatory assessment fees, penalties, and interest, it has not construed them to preclude a reasonable payment schedule to redress a utility's delinquency.

In Docket No. 900961-SU, *In Re: Request for waiver of penalty and interest added to regulatory assessment fees for 1989, by St. George Island, Company, Ltd., in Franklin County*, the Commission, in Order No. 24290, *Order Denying Petition for Waiver of Penalties and Interest*, issued March 26, 1991, permitted the utility to submit a proposed payment schedule for its outstanding regulatory assessment fees, penalties and interest. The Commission noted that it had no statutory authority to grant waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown. In Order No. 24884, *Order Establishing Payment Schedule for 1988 and 1989 Regulatory Assessment Fees*, issued August 6, 1991, the Commission rejected the

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utility's proposed payment schedule of \$250 per month for 52 months, but authorized a payment schedule of \$2,500 per month until the balance, then \$13,036, was paid.

In Docket No. 940974-WU, *Application for staff-assisted rate case in Putnam County by Landis Enterprises, Inc.*, the Commission, in Order No. PSC-94-1464-FOF-WU, *Order Establishing Payment Schedule for Application Filing Fees and Delinquent Regulatory Assessment Fees, Including Penalties and Interest*, issued November 29, 1994, permitted the utility to pay its delinquent 1992 and 1993 regulatory assessment fees, with penalties and interest, in four monthly installments. The Commission found that a 12-month period beginning with the due date for the 1993 fee in which to remit the fees was reasonable in the circumstances. It again noted that "[p]ursuant to Sections 350.113(4) and (5), . . . and Rule 25-30.120(5), Florida Administrative Code, we are required to collect interest, penalties and collection cost Neither the Florida Statutes nor the Commission Rules provide us with discretion to waive fees, penalties and interest." See also, Order No. PSC-94-1463-POF-WS, *Order Holding Staff-Assisted Rate Case in Abeyance, Conditionally Approving Payment Plan for Application Filing Fees, Conditionally Approving Payment Plan for Delinquent Regulatory Assessment Fee, Denying Request for Waiver of Penalties and Interest, Denying Reinstatement of Suspended Fine, and Order to Show Cause*, issued November 29, 1994, Docket No. 940982-WS, *In Re: Application for staff-assisted rate case in Volusia County by Pine Island Utility Corporation*. The Commission has ruled similarly in Docket Nos. 951244-WS, 951585-WU, and 960219-WS, containing Orders Nos. PSC-95-1514-FOF-WS, PSC-96-0282-FOF-WU, and PSC-96-0580-FOF-WS, respectively.

Based on the extreme financial and environmental condition of this utility, staff believes the utility, with Citrus County as receiver, should be allowed to pay the penalties and interest over time. The Commission's approval of a payment plan is subject to the final approval of the State of Florida Comptroller's Office, Department of Banking and Finance.

Therefore, based on the above discussion, staff recommends that the utility's request for a payment plan be approved. The receiver should be allowed to repay the total penalties and interest of \$1,192.40 over a six month period, with a minimum monthly payment of \$198.73. The first payment should be due by April 15, 1998, and subsequent payments should be made by the 15th of each month. At that rate, the penalties and interest shall be paid in full by September 15, 1998.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to address the outstanding penalties associated with the utility's late-filing of its 1994 and 1995 annual reports. (REYES)

STAFF ANALYSIS: A separate recommendation will be prepared in this docket to address the outstanding penalties associated with the utility's late-filing of its 1994 and 1995 annual reports after staff receives additional information from the utility. Therefore, this docket should remain open.